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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CV-S-05-0009-LDG-LRL

CESAR and JOCELYN RECIO,
Guardian et Litem of J. R., minor
Student,

Plaintiffs,

**COMPLAINT FOR ATTORNEY FEES
AND COSTS**

vs.

CLARK COUNTY SCHOOL DISTRICT,
Defendant.

COMES NOW, Plaintiffs, CESAR and JOCELYN RECIO, through their legal counsel, MARIANNE C. LANUTI and hereby files this Complaint For Attorney Fees and Costs pursuant to Title 20 United States Code, Section 1415(i)(3).

PLAINTIFFS' COMPLAINT FOR ATTORNEYS' FEES AND COSTS

PRELIMINARY STATEMENT

1. This action is brought by CESAR and JOCELYN RECIO, who seek reasonable attorney's fees and costs pursuant to Section 1415(i)(3)(B) of the Individuals with Disabilities Education Act ("IDEA"), Title 20 United States Code Section 1400 *et. seq.* for expenses incurred in achieving substantial success in issues brought to forth on behalf of their disabled son, J.R.

JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court pursuant to the Individuals with Disabilities Education Act (IDEA), Title 20 United States Code Section 1415.

3. Jurisdiction is also conferred upon this Court by Title 28 United States Code Section 1331 which authorizes federal courts to adjudicate disputes arising under the constitution and laws of the United States.

4. Venue is proper in the United States District Court for the District of Nevada authorized by Title 28 United States Code Section 1391.

PARTIES

5. Plaintiffs' CESAR and JOCELYN RECIO are citizens of the United States and residents of the State of Nevada, Clark County and within the Clark County School District when the claim arose.

6. Plaintiffs CESAR and JOCELYN RECIO (hereinafter "Parents") are the natural Parents of J.R., (hereinafter "Student") a disabled child who is eligible for special education and related services pursuant to the Individuals with Disabilities Education Act, Title 20 United States Code Section 1400 *et. seq.*, and the regulations promulgated thereto, as implemented by the State of Nevada, Nevada Administrative Code Section 388 *et. seq.*

7. Defendant CLARK COUNTY SCHOOL DISTRICT is a local educational agency as defined in Title 20 United States Code Section 1401, which is located in the State of Nevada, Clark County, and is chartered and

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1 incorporated under Nevada law, with the capacity to be sued. CLARK
 2 COUNTY SCHOOL DISTRICT receives federal funds from the United States
 3 Department of Education pursuant to the Individuals with Disabilities
 4 Education Act and is required to provide a free and appropriate public
 5 education in the least restrictive educational environment to all qualified
 6 disabled school-age children whose Parents resides within the District's
 7 boundaries.

8 FACTS

- 9
- 10 8. On or about March 30, 2004, Plaintiffs' submitted a request for an Impartial
 11 Due Process Hearing pursuant to the Individuals with Disabilities Education
 12 Act (IDEA), Title 20 United States Code Section 1415 et. seq.
- 13 9. Student was entitled to receive special educational services under the
 14 category of autism.
- 15 10. Plaintiffs' alleged that Defendant failed to provide Student with a free and
 16 appropriate public education during the 2001/2002; 2002-/2003 and
 17 2003/2004 school year.
- 18 11. Plaintiffs' alleged the Defendant committed both procedural and substantive
 19 violations pursuant to Title 20 United States Code Section 1415 et. seq.
- 20 12. Plaintiffs' allege that the procedural violations included, but not necessarily
 21 limited to, failure to properly evaluate Student across all environments ergo a
 22 deprivation of parental participation in the Individualized Education Plan
 23 (hereinafter, "IEP") in a meaningful manner. (Amanda J. v. Clark County
 24 School District, 260 F.3d 1006 (9th Cir. 2001).
- 25 13. Plaintiffs' allege that Defendant committed procedural violations during the
 26 2001/2002; 2002/2003 and 2003/2004 school year that resulted in Student's
 27 loss of an educational benefit.
- 28 14. Plaintiffs' allege that Defendant committed substantive violations pursuant to
 Title 20 United States Code Section 1415 et. seq.

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1 15. Plaintiffs' allege that Defendant's substantive violations included, but not
 2 necessarily limited to, failure to provide Student with appropriate
 3 supplementary supports and services. These services include, but not
 4 necessarily limited to, an intensive behavioral home intervention program.

5 16. Plaintiffs' sought as a resolution for this matter, known at the time:

6 A. An intensive behavioral home intervention program consisting of 30-40
 7 hours per week of applied behavioral analysis (hereinafter, "ABA") plus
 8 monthly workshop consultations by an approved Defendant provider. The
 9 cost for the above mentioned services is approximately \$40, 000 to \$60,000
 10 per year.

11 B. Reimbursement for expenditures associated with Student's private
 12 placement.

13 C. Reasonable attorneys' fees and costs.

14 17. On or about April 5, 2004, Hearing Officer Nilsine Hansen (hereinafter,
 15 "IHO") was appointed by the Nevada Department of Education.

16 18. On or about April 20, 2004, a prehearing conference was conducted between
 17 the relevant parties. An impartial due process hearing was scheduled to
 18 occur between June 3 through June 15, 2004. Disclosure and witness lists
 19 were scheduled to be exchanged on May 26, 2004.

20 19. On or about June 22, 2004 the relevant parties commenced discussions for
 21 additional dates for testimony. Additional administrative hearings were
 22 conducted between August 16 through August 20, 2004; September 17,
 23 2004 and November 29, 2004.

24 20. On or about December 8, 2004, Plaintiff received notification of the "IHO"
 25 decision dated December 6, 2004. Plaintiff prevailed on all three issues and
 26 received the following relief: :
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 28

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- 1 A. Defendant shall reimburse Plaintiffs \$230.48 for speech/language services
- 2 provided at private expense.
- 3 B. Defendant shall reimburse Plaintiffs \$1,825.00 for speech/language
- 4 services provided at private expense..
- 5 C. Defendant shall reimburse Plaintiffs for an psychological evaluation in the
- 6 amount of \$300.00 provided at private expense.
- 7 D. Defendant shall reimburse Plaintiffs \$1,000.00 for an
- 8 evaluation/consultation provided at private expense.
- 9 E. Defendant will provide a consultant for Plaintiff during the 2004/2005
- 10 school year , including extended year services, to provide ABA (hereinafter
- 11 Applied Behavioral Analysis) within the home setting for a minimum of ten
- 12 hours per month.
- 13 F. Defendant will provide a individual trainer within the home/community
- 14 setting, trained in "ABA", for a minimum of ten hours per week during the
- 15 2004/2005 school year including extended school year services.
- 16 G. Defendant will provide Plaintiff eight hours of occupational therapy within
- 17 the home environment.
- 18 H. Defendant will provide at least 90 minutes of direct speech/language
- 19 services to Plaintiff within the school environment.
- 20 I. Defendant will provide the above relief within 20 school days from the date
- 21 of the Order.
- 22 21. On or about December 10, 2004 Plaintiffs attended an Individualized
- 23 Educational Plan (hereinafter "IEP") to commence implementation of the IHO
- 24 Order dated December 6, 2004. Defendants represented an intent to
- 25 implement the above referenced Order and ergo no intent of further appeal.
- 26 22. On or about December 10, 2004, an Individualized Education Plan (hereinafter
- 27 "IEP") was scheduled for January 19-20, 2005.
- 28 23. On or about December 17, 2004, Plaintiffs' submitted a request for
- reasonable attorneys' fees and costs in the amount of \$70,889.00

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1 24. On or about December 17, 2004, Plaintiffs' submitted to Defendant a
2 detailed accounting of reasonable attorney fees and costs and requested
3 reimbursement pursuant to their prevailing party status.

4 25. As of January 05, 2005, Plaintiffs have heard no response from Defendants.
5

6 **CLAIM FOR RELIEF**

7 Wherefore, Plaintiffs' respectively request that the Court:

8 26. Plaintiffs repeat and allege each and every allegation contained in
9 paragraphs 1 through 25 as it fully set forth herein.

10 27. Plaintiffs have incurred attorneys' fees and costs for the amount of
11 \$70,889.00 for pursuing this cause of action.

12 28. Plaintiffs' attorneys fees and costs continue to incur.

13 29. Pursuant to Title 20 United States Code Section 1415(i)(3), this Court may
14 award reasonable attorneys' fees to the prevailing party bringing action
15 under Title 20 United States Code Section 1400 et. seq.

16 30. CESAR and JOCELYN RECIO are prevailing parties in this matter, as is
17 adjudicated in the Impartial Hearing Officer's Decision "IHO" dated
18 December 6, 2004 are statutorily entitled to recover the reasonable
19 attorneys' fees and costs associated with preparing for the underlying
20 administrative action, representation during the administrative hearing, and in
21 filing and pursuing this complaint as provided for by Title 20 United States
22 Code Section 1415(i)(3).
23
24

25 **PRAYER FOR RELIEF**

26 Wherefor, Plaintiffs respectively request that the Court:

27 31. Assume jurisdiction over this case;

28 32. Award Plaintiffs' counsel reasonable attorneys' fees and costs for the
representation in this matter, as well as reasonable attorneys' fees and costs

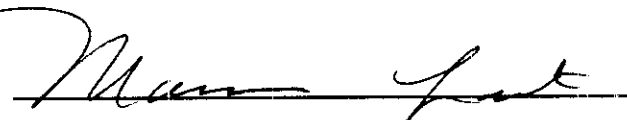
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1 according to proof, for the efforts to obtain these sums from Defendant,
2 including fees and costs associated with bringing this action; and,
3 33. For any other relief as the Court deems appropriate.
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6 Dated: January 04, 2005

7 The Law Offices of Marianne C. Lanuti

8
9 By:



10 MARIANNE C. LANUTI, *Esq.*

11 *Attorney for Plaintiffs.*
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